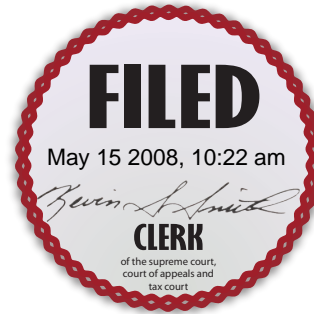


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE THE TERMINATION OF THE)
PARENT-CHILD RELATIONSHIP OF)
O.V., a minor child, and TONYA ROACH-)
VEENSTRA, her mother, and JAMIE)
VEENSTRA, her father,)

TONYA ROACH-VEENSTRA,)

Appellant-Respondent,)

vs.)

NOBLE COUNTY DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner.)

No. 57A04-0706-JV-327

APPEAL FROM THE NOBLE SUPERIOR COURT
The Honorable Michael J. Kramer, Judge
Cause No. 57D02-0701-JT-001

May 15, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent Tonya Roach-Veenstra appeals the termination of her parental relationship to her daughter, O.V. Veenstra argues that she was denied due process of law because she allegedly received the ineffective assistance of counsel during the termination proceedings. Finding no error, we affirm.

FACTS

Tonya and Jamie Veenstra are the parents of O.V., who was born on September 28, 2005. Tonya tested positive for cocaine at the time of O.V.'s birth; consequently, appellee-petitioner Noble County Department of Child Services (DCS) removed O.V. from Tonya's care on September 29, 2005, and placed the infant with her paternal grandmother. DCS filed a petition seeking a declaration that O.V. was a Child in Need of Services (CHINS), and on November 17, 2005, Tonya admitted the allegations of the petition and O.V. was declared a CHINS.

During the pendency of the CHINS proceedings, Tonya tested positive for cocaine four times. She also avoided submitting to requested drug screens on a number of occasions. She participated in supervised visitation with O.V. inconsistently and eventually visitation was discontinued after Tonya missed several scheduled visits during January 2006. Tonya failed to attend court-ordered counseling on a regular basis and eventually dropped out of the program altogether. She also failed to complete a parenting assessment as ordered and was removed from a court-ordered Intensive Outpatient Program because of poor attendance. Tonya failed to appear at court hearings in January

and February 2006. Eventually, DCS lost contact with Tonya and did not know her whereabouts until October 2006, when DCS learned that Tonya was incarcerated in Dwight, Illinois, on a 2003 possession of cocaine charge.

In January 2007, DCS filed a petition to terminate the parent-child relationship of Tonya and O.V. Tonya was represented by an attorney during all termination proceedings. On May 1, 2007, the trial court held a factfinding hearing at which Tonya participated via video teleconference from Dwight Correctional Facility in Illinois. On May 2, 2007, the trial court terminated the respective parent-child relationships of Tonya, Jamie, and O.V., finding in pertinent part that

both parents are incarcerated with [Tonya's] earliest release date in February, 2008 and [Jamie's] release date in Illinois is 2011 after which he has to serve a Noble County, Indiana sentence; Tonya [] made sporadic efforts . . . to comply with the court[']s orders or to receive services to remedy the reasons for the removal and permit return of the child; and the unrefuted [sic] evidence is that Tonya [] admitted that she stops using illegal drugs while incarcerated or in intensive treatment but resumes after release from incarceration or treatment programs

Termination Order p. 1.¹ The trial court also found that Tonya's continued drug use would jeopardize her ability to "provide food, shelter, supervision, and guidance, as well as providing for other needs." Id. at 2. Termination is in O.V.'s best interests "in that she needs a stable home and [should] not face the reasonable probability of serial placements in future CHINS proceedings." Id. Tonya now appeals.

¹ Tonya's appendix is not consecutively paginated.

DISCUSSION AND DECISION

Tonya argues that the trial court's order terminating her parental relationship with O.V. was erroneous because she received the ineffective assistance of counsel. A panel of this court recently addressed the issue of assistance of counsel in termination proceedings:

In Indiana, all indigent parties have a statutory right to the assistance of counsel in termination of parental rights proceedings. Ind. Code §§ 31-32-4-1; 31-32-2-5. However, the inquiry into whether counsel's assistance was effective is not the Strickland[v. Washington, 466 U.S. 668 (1984),] inquiry used in criminal cases; instead "the focus of the inquiry [is] whether it appears that the parents received a fundamentally fair trial whose facts demonstrate an accurate determination." Baker v. Marion County Office of Family and Children, 810 N.E.2d 1035, 1041 (Ind. 2004).

Lang v. Starke County Office of Family and Children, 861 N.E.2d 366, 375 (Ind. Ct. App. 2007) (footnote omitted) (brackets in original), trans. denied. Additionally, at the terminating hearing a parent is entitled to cross-examine witnesses, obtain witnesses or tangible evidence by compulsory process, and introduce evidence on her behalf. I.C. § 31-32-2-3(b).

Tonya frames her ineffective assistance argument by contending that her attorney's ineffective assistance denied Tonya basic due process. The Lang court explained due process in the context of termination proceedings as follows:

When terminating a parent-child relationship, the State is bound by the requirements of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Castro, 842 N.E.2d at 375. Assessing whether a parent's due process rights have been violated in a termination proceeding involves the balancing of three factors: "(1) the private interests affected by the proceeding; (2) the risk of error created by the State's chosen procedure; and (3) the

countervailing government interest supporting use of the challenged procedure.” A.L.H., 774 N.E.2d at 900. Both [the parent’s] interest in maintaining [her] parental rights and the State’s countervailing interests in protecting the welfare of children are substantial. Id.

Id. at 366-67.

Tonya offers three ways in which her attorney was allegedly ineffective: (1) for failing to object to certain testimony about Jamie; (2) for failing to gather and present evidence, prepare for the proceedings, and present a defense; and (3) for failing to seek a continuance of the hearing until Tonya could attend in person or the malfunctioning video equipment could be repaired.

Tonya first argues that her attorney should have objected to a wealth of testimony about what Jamie “did or didn’t do,” contending that although “this testimony was about Jamie, it was used to reflect poorly on me.” Appellant’s Br. p. 1. She does not, however, explain how this testimony was used to reflect poorly on her, nor does she explain how it affected the trial court’s decision, if at all. Furthermore, she does not explain what basis there would have been for an objection, especially in light of the fact that Jamie was represented by his own attorney at the termination hearing. Consequently, we cannot find that her attorney was ineffective for this reason.

Next, Tonya insists that her attorney was ineffective for failing to gather and present evidence, prepare for the proceedings, and present a defense. Initially, we note that some of the evidence that Tonya suggests her attorney should have presented at the hearing consists of certificates indicating completion of different programs and letters she sent to O.V.’s grandparents that are dated after the date of the termination hearing and

were, therefore, necessarily unavailable to be introduced into evidence at that time. Furthermore, Tonya directs our attention to other certificates and letters that were a part of the record in the CHINS case, which was admitted into evidence in full at the termination hearing.

Moreover, Tonya's attorney did present evidence that Tonya had participated in and completed several programs and presented evidence that Tonya had attempted to stay in contact with her daughter. Counsel also called witnesses, cross-examined the State's witnesses, objected throughout the proceedings, and offered a closing statement. She refused to stipulate to the entry of the CHINS court file into evidence until she reviewed the file in its entirety. Under these circumstances, we simply cannot conclude that Tonya's attorney was ineffective for a failure to present evidence, prepare for the proceeding, or present a defense.

Finally, Tonya argues that her attorney was ineffective for failing to object to Tonya's participation in the termination hearing via video teleconference. Tonya was able to testify and address the court. She was called as a witness for the State and then called again to testify on her own behalf. Furthermore, although Tonya points out that the equipment malfunctioned at certain times, the record reveals that when malfunctions occurred, the trial court ceased testimony until communication was again established. Tr. p. 23-24, 28, 34, 54-55, 159. Finally, Tonya argues that her attorney should have sought a continuance until her client could be physically present at the hearing. It is evident, however, that the motion would have been overruled given the well-established rule that although an incarcerated parent has "the right to be heard at a meaningful time and in a

meaningful manner” at a termination hearing, she “does not have an absolute right to be physically present” at the hearing. Tillotson v. Clay County Dep’t of Family and Children, 777 N.E.2d 741, 745 (Ind. Ct. App. 2002). Consequently, Tonya has not established that she was prejudiced by her attorney’s failure to object to the arrangement. We find, therefore, that counsel was not ineffective for this reason.

Ultimately, we find that Tonya did not receive the ineffective assistance of counsel during the termination proceedings. Furthermore, we find that she was able to participate meaningfully in a fundamentally fair trial, whose outcome she does not directly challenge. Thus, we find that Tonya’s due process rights were not violated.

The judgment of the trial court is affirmed.

RILEY, J., and ROBB, J., concur.